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APPENDIX

(filed June 15, 1967)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1966

Misc. No. 54-65

In the Matter of:
DIANA KEARNY POWELL } Disbarment No. 108

Before: Bazelon, Chief Judge, and Danaher, Burger, Wright, McGowan, Tamm, Leventhal and Robinson, Circuit Judges, in Chambers.

Order to Show Cause

It having been shown to the court by a certified copy of an order of the United States District Court for the District of Columbia that on April 7, 1966, after a hearing upon charges filed by its Committee on Admissions and Grievances the District Court entered an order disbarring Diana Kearny Powell from further practice of law before the bar of the District Court and prohibited her thenceforth from holding herself out to be an attorney at law in the District of Columbia, it is, therefore, pursuant to Rule 7(e)(1) of this court,

ORDERED by the court that Diana Kearny Powell, a member of the bar of this court, is hereby suspended from the practice of law before this court, and that, unless she shows good cause to the contrary within forty (40) days hereof, she shall stand indefinitely suspended until further order of this court.

Per Curiam.

Dated: June 15, 1967

(Filed June 20, 1967)

Motion to Set Aside Suspension From Practice Pending Answer to Order to Show Cause

Comes now Respondent Diana Kearny Powell and respectfully moves this Honorable Court to set aside the Order of Suspension dated June 15, 1967, pending opportunity to prepare an Answer to the Order to Show Cause, and as grounds therefor states:

1. Disbarment of Respondent in the United States District Court for the District of Columbia on April 7, 1966, and its affirmance in this Court, dated January 12, 1967, on appeal, were each based upon misapprehension of facts admitted and patent in the record: that is, the Court found as a matter of fact that Respondent's formal Complaint in *Diana Kearny Powell* v. *Nicholas Katzenbach, United Staes Attorney Generdl,* —— U.S. App. D.C. ——, —— F.2d ——, —— U.S. ——, cer. Den. —— U.S. ——) seeking criminal action against a trustee and others for conversion of trust funds by patent misrepresentations of fact and law, and specifically, the implication of two judges by corroborating the misrepresentations and condoning the embezzlement, was false and without foundation in fact, whereas each and every statement made by Diana Kearny Powell was fully supported by the record set forth in her trial brief in fifty-two pages of court records (Appendix A) and twenty pages of analysis of the foundation of the charges, (Appendix B) comparing the statements of the judges with the record and with the law to show that the statements could not have been made in good faith and through honest error. The question was not whether the statement of the judges was privileged or whether they represented sufficient intention to support a criminal charge, but whether Respondent Diana Kearny Powell had probable cause to believe that they should be investigated by the Attorney General as a fraud upon the

United States in the exercise of their judicial duties, that is,/to render impartial justice, free of prejudice or partiality, and predicated upon the undisputed facts of record. In rendering its judgment of Disbarment, and in the affirmance of the judgment, that Respondent's Complaint to the Attorney General, a privileged communication, was totally without foundation, the Court was in effect excluding from its consideration seventy-two pages of evidence submitted by Respondent beside numerous other references to the records of the Court, all matters of record and undisputed.

2. The United States District Court has informally indicated its willingness to reconsider reinstatement. Application for reinstatement is being made concurrently with this defense, and postponed pending disposition of the Petition to the Supreme Court for review, and of the final disposition of the accounting of Diana Kearny Powell's Committeeship in Mental Health 1383-62, In the Matter of Bernard Livingston. Respondent Diana Kearny Powell is happy to invite investigation and comparison of the record of how she handles a trust estate.

3. This Court has already acted upon the Complaint in *Powell* v. *Katzenbach, supra,* with the opportunity to review the point as to whether or not it was false and scandalous, as alleged in the disbarment proceeding. In that case this Court acted solely upon the question of whether mandamus would lie against the Attorney General for the purpose of compelling criminal prosecution under 68 Stat. 998 (1954), 5 U.S.C. sec. 311a (1958), stating, "The complaint in its entirety fails to state a cause of action, and we thus need not reach the issue as to whether the striking of two of its paragraphs was warranted."

4. Respondent, Diana Kearny Powell has an absolute right to unconditional and unqualified reinstatement. This Court, in affirming the Judgment of Disbarment, specified

that affirmance was not to be considered a bar to reinstatement upon an appropriate showing.

5. Respondent is entitled to unconditional and unqualified reinstatement. The condition suggested by counsel for the Committee that she "recant", is tantamount to using disbarment as a means of blackmail and extortion, and offering reinstatement as a bribe to induce her to lie to the Court to compound the felonious embezzlement and fraud of the trustee that were the subject of Respondent's Complaint to the Attorney General.

6. This Court has recently held that conversion of trust property by a fiduciary was grounds for disbarment. *In re Quimby*, 123 U.S. App. D.C. 273, 359 F.2d 257 (1966), and *In the Matter of Ewers*, U.S. App. D.C., Disbarment No. 106, May 4, 1967. Judge Burger rendered a concurring opinion in the latter case. Respondent directs attention to the disparity of treatment by which attorneys guilty of the crime of embezzlement are excused or merely suspended, and trusts that Judge Burger and every member of the Court would want to correct the grave injustice that has been done her, not only in allowing the trustee bank to convert trust funds with impunity, but in the even graver wrong of disbarment for the sole reason that she made a complaint of a well-authenticated crime to the Attorney General.

/s/ DIANA KEARNY POWELL,
Diana Kearny Powell, Respondent
1500 Massachusetts Ave., N. W.
Washington, D. C. 20005

(Certificate)

(filed July 13, 1967)

Before Bazelon, Chief Judge; and Danaher, Wright, Tamm, Leventhal, and Robinson, Circuit Judges, in Chambers

Order

Upon consideration of petitioner's "motion to set aside suspension from practice pending answer to order to show cause", it is

ORDERED, by the Court, that the motion is denied.

Per Curiam.

(filed July 24, 1967)

Answer to Order to Show Cause

Respondent Diana Kearny Powell respectfully answers the Order of the United States Court of Appeals for the District of Columbia Circuit entered June 15, 1967, to show cause why she should not be disbarred or suspended by showing to this Court that she has committed no act to justify disbarment, but on the contrary has at all times maintained the highest standards of professional ethics and good conduct, and that she has acted in the best interest of the proper administration of justice. Respondent submits that her disbarment will cause irreparable damage to the public respect for this Court as a vehicle of justice, and respectfully prays for full hearing and consideration by the Court en banc, with the right to subpoena and examine witnesses, to submit additional evidence, and for oral argument.

In support of this Answer, Respondent shows to the Court as follows:

1. RESPONDENT DIANA KEARNY POWELL HAS COMMITTED NO ACT TO JUSTIFY HER DISBARMENT IN THIS OR IN ANY OTHER COURT.

Respondent has acted at all times in the highest traditions of professional ethics and propriety, and especially has sacrificed her personal interests to defend, at the high cost of being charged with perjury and professional chicanery, the integrity of the Court and of the administration of justice against the corruption which the record in this case reveals to be a fact.

Respondent categorically denies that any written or oral statement that she has made in any way is knowingly false or without foundation. To the best of her ability, she has promptly admitted and corrected the occasional inadvertent error upon discovering it, as she would expect the Court and opposing counsel to do.

Respondent has submitted proof which shows beyond a shadow of a doubt and to a mathematical certainty that the accusations of misconduct which she made against the National Savings and Trust Company as trustee, Henry Paige and Benjamin Dulany as lawyers submitting knowingly spurious claims against the trust, and Judge Holtzoff and Judge Burger in aiding the fraud of the trustee bank, were fully supported and justified by the undisputed record.

This undisputed record, admitted into evidence and judically noticed by the three-judge Court at the disbarment proceeding, Miscellaneous No. 54-65, is incorporated in Respondent's Brief and Appendix, was before the District Court, and of this Court on appeal. *Powell* v. *Committee on Adm. & Grievances*, —— U.S. App. D.C. ——, —— F.2d ——, 87 S. Ct. 1487, 386 U.S. 1035. This original "Respondent's Brief and Appendix" are made a part hereof as EXHIBIT A.

This brief spells out in detail particular false statements of the judges and the record proving them to be false. (App. B). It further notes numerous instances in which the judges refused to correct the error when it was shown to them. In contrast, neither the Committee, the Court, nor the persons accused have been able to produce one single instance of any statement of Respondent that does not accurately state the record. The disbarment has of necessity been founded upon sweeping generalities and conclusions without any showing of evidence to support the conclusions of misconduct by Respondent Diana Kearny Powell, since no such evidence exists. This has been combined with total disregard of the evidence, and broad denials of the existence of indisputable facts, spread before the eyes of those who smugly accuse Respondent of misconduct in making false and unfounded charges. This, Respondent submits, is the essence of corruption. It would shock the conscience of a gangster, but is condoned, supported, and approved by this Court, and by the Committee charged with the duty of keeping the legal profession pure and unsullied.

Respondent shows, in addition to the Order of Disbarment itself, the Reply Brief submitted by Respondent as Appellant in the related case in this Court, *Powell* v. *Holtzoff*, (No. 20,544), —— U.S. App. D.C. ——, —— F. 2d ——, 384 U.S. 938, 1027, 86 S. Ct. 1461, 1919. (petition combined with *Powell* v. *National Savings and Trust Company*), in which fundamental facts are shown to be misstated by Judge Holtzoff in his Answer, defended by the United States Attorney in an *ultra vires* act where it should be prosecuting him for perjury and obstruction of justice. Reply Brief for Appellant in *Powell* v. *Holtzoff* (No. 20,544), is made a part hereof as EXHIBIT B.

Respondent applied for reinstatement in the United States District Court, which was denied because she would

not perjure herself and deceive the Court by making a false denial of the record supporting her accusations against the bank, the two lawyers, and the two judges. This denial of reinstatement now pending appeal, attempts to blackmail Respondent into committing the very misconduct she is accused of, making false and unfounded statements to the Court. Requests for admissions of Fact and Interrogatories addressed to the Committee on Admissions and Grievances were answered notwithstanding the pre-dated Order (June 23, 1967), which was received June 28, 1967. The Answers, arriving by mail several days later, did not fully respond to the questions, with no opportunity to apply to the District Court for an Order for the precise answers specified in the questions. Respondent submits that under these circumstances, evasion of the precise answers requested is an admission that no precise answer is possible. The Requests for Admissions of Fact and their Answers, and the Interrogatories and their Answers are incorporated herein as EXHIBITS C, D, E, and F.

Specifically, Respondent notes that the entire twenty pages of Appendix B of Respondent's Trial Brief (EXHIBIT A), a detailed but purely factual analysis of the misquotations by the two judges with cross-references to the record set out in Appendix A, is included in one sweeping allegation that it is without foundation, although Respondent counts approximately 156 specific references to the record, most of them by line, to support her allegations.

2. FACTS.

Respondent was disbarred in the United States District Court for the District of Columbia on April 7, 1966, because of a Complaint in the Nature of Mandamus which she addressed to the Attorney General. This complaint sought criminal action against a bank, two lawyers, and two judges for fraud upon an estate of which the bank had been

trustee. The written statement, couched in general terms, was fully supported in every particular by Court records, which even showed the wrongful intent, evidenced by repeated refusals to correct patent misstatements of the record, after notice of the error. This Complaint, dismissed on the ground mandamus would not lie against the Attorney General for a discretionary act, was taken to this Court and ultimately certiorari was denied by the Supreme Court. *Powell* v. *Katzenbach*, 123 U.S. App. D.C. 250, 359 F. 2d 234, 86 S. Ct. 1341, 1584, 384 U.S. 906, 967.

Disbarment, purportedly based solely on the statements regarding the two judges, was in fact being urged by associates of the Attorneys, known to have contacted Principal Assistant United States Attorney Charles T. Duncan, shortly thereafter appointed Corporation Counsel despite his admittedly having been involved in a somewhat similar incident concerning trust funds.

Disbarment was entered in the District Court and affirmed in this Court with obvious failure to give even cursory review of the evidence set out in the trial brief showing overwhelming support of Respondent's complaint. (EXHIBIT A) The details and arguments are already before the Court and are incorporated by reference.

Upon denial of petition for certiorari to the Supreme Court of the United States, *Powell* v. *Committee on Admissions and Grievances*, 87 S. Ct. 1487, 386 U.S. 1035, Respondent applied for reinstatement in accordance with the suggestion of this Court in affirming disbarment. (No. 20,181, not yet reported) This was arbitrarily denied, in Order received June 28, 1967, and pre-dated June 23, 1967.

3. Respondent Has Been Disbarred for the Act of Good Citizenship and Professional Responsibility of Reporting to Proper Authority Crime and Professional Corruption.

Respondent has been disbarred because she made a complaint to the Attorney General of a fully substantiated crime, as shown in the pleadings. The making of the Complaint was a moral and professional obligation in the highest tradition of loyalty to the legal profession and to the Court.

As a citizen, Respondent asks for scrutiny of this case in which she is punished by disbarment for the act of good citizenship in reporting crime. Respondent unqualifiedly maintains that it is her duty as a member of the Bar of the Court and in the interest of proper administration of justice to report criminal acts of which she has positive proof, regardless of the prestige and influence of the parties committing the crime, and without regard to threats and acts of retaliation against herself.

The city of Washington has become unbelievably corrupt. Citizens on all sides clamor in vain for law, honesty and justice. They are not deceived that the primary responsibility for the escalation of crime and corruption lies with the Courts and the legal profession. Day after day the good people of this city see robbery and violence condoned, the innocent victimized, the corrupt protected at all levels. Dope syndicates and organized crime operate openly under the eyes of the police, trusts are plundered with the connivance of the Court, and crime has become a qualification for honors and public office. The only act which is condemned as unforgivable is to expose the vice and crime and corruption that riddle this city from the slums to its highest officials.

This disbarment could not have been consummated except in this atmosphere of corruption, and of which it is the ultimate expression.

4. RESPONDENT AS A LITIGANT HAS AN UNQUALIFIED RIGHT TO DEMAND JUSTICE AND INTEGRITY IN THE COURT WITHOUT FEAR.

Respondent unqualifiedly maintains that she and every litigant has an absolute right to demand justice and integrity in the Court, and in each and every member of the Court. Justice and a fair review of the facts is not a favor to be granted or withheld at the whim of the judge. It is the duty of the Court to every litigant to administer justice according to law, to consider all the admitted evidence candidly and without prejudice, favoritism or influence. In defending this right, Respondent is upholding the highest interest of the Court itself as an instrument of the administration of justice against corruption within itself that amounts to fraud on the United States. *Braatelien* v. *United States*, 147 F. 2d 888 (1945); *United States* v. *Manton, et al.*, (2d Cir.) 107 F. 2d 834, *cert. den.*, 309 U.S. 664. Respondent and every litigant has an absolute right and positive duty to seek redress from the appropriate Government authority for flagrant abuse and violation of the right to justice.

In the afternoon of June 27, 1967, a man slipped into Respondent's apartment and attempted to kill her. This shocking experience seems almost beyond belief. To Respondent it is less shocking than this disbarment, that speaks loud and clear that the Court and Committee have so far departed from the universally accepted norms of right and wrong that they condone this blackmail to force suppression of a complaint of an authenticated crime. This country is truly in great trouble when the Courts entrusted with the most precious rights of people, like the whited sepulchres of Scripture, are concerned only with the self-delusional appearance of justice, while destroying the reality. Compare *In re Quimby*, 123 U.S. App. D.C. 273, 359 F. 2d 257 (1966), and *In the Matter of Ewers*, U.S. App. D.C. Disbarment No. 106, May 4, 1967.

Conclusion

It is the positive duty of this Court to Respondent, to itself, and to the Government of the United States to correct the grave injustice that it has committed.

Wherefore, Respondent respectfully prays this Court:

1. To grant her full reinstatement and restoration of her status as a member in good standing of its bar;

2. To correct all errors and misstatements in the record in this and related cases, occasioned by its errors;

3. To Order review and reinstatement in accordance with the record in the United States District Court.

4. For such other and further relief as to the Court seems just and proper.

/s/ Diana Kearny Powell
Diana Kearny Powell,
Respondent
1500 Massachusetts Avenue, N.W.
Washington, D. C. 20005

(Certificate Jurat)

(Filed Oct. 4, 1967)

Before: Bazelon, Chief Judge, and Danaher, Burger, Wright, McGowan, Tamm, Leventhal, and Robinson, Circuit Judges, in Chambers.

Order

On consideration of the answer of Diana Kearny Powell to this Court's order directing her to show cause why she should not be disbarred or suspended and of her Exhibits A and B appended thereto, and the Court en banc deeming her answer insufficient, it is

ORDERED by the Court en banc that Diana Kearny Powell is hereby disbarred from the practice of law before this Court, and the Clerk shall strike her name from the roll of attorneys admitted to practice before this Court.

Per Curiam

Dated: Oct. 4, 1967

Chief Judge Bazelon and Circuit Judge Burger did not participate in the foregoing order.

(Filed Oct. 6, 1967)

Motion to Set Aside Order of Disbarment

Respondent Diana Kearny Powell respectfully moves this Honorable Court to set aside the Order of Disbarment in the above-entitled cause entered October 4, 1967, and as grounds alleges error as follows:

1. The Order of Disbarment is defective in that it fails to state grounds for disbarment, or to show in what respect the Court considers Respondent's Answer to be insufficient. Respondent's Answer, duly filed, showed Motion for Reinstatement in the District Court was pending. This Motion, preliminary to this proceeding as removing the sole grounds stated in the Order to Show Cause, is as yet

undetermined in this Court on Appeal, No. 21,220, *Powell* v. *Committee on Admissions and Grievances,* consolidation having been denied by Order of this Court filed September 12, 1967. Both the Answer and the Appeal present evidence that the Disbarment was the product of a conspiracy to blackmail Respondent and to discredit her Complaint, based on irrebuttable evidence, against a bank, two attorneys, and two judges, of criminal fraud. Supporting the propriety of Respondent's Complaint against members of the legal profession involved in criminal fraud are *Canons of Professional Ethics,* Canon 1; *In re Quimby,* 123 U.S. App. D.C. 273, 359 F.2d 257; *In re Ewers,* U.S. App. D.C. Disbarment 106. Motion to consolidate was denied by Order filed September 12, 1967.

2. This Disbarment is invalid as premature. Respondent's Answer seeks as a right protected by Constitutional guaranties hearing by the Court *en banc.* This hearing has neither been granted nor denied. Constitution of the United States, Amendments Six, Nine.

3. Non-participation of Judges Bazelon and Burger deprive Respondent of a fair hearing and the right of confrontation guaranteed by various amendments to the Constitution. Non-participation by Judge Burger is particularly prejudicial, since it is peculiarly a duty of Judge Burger, in the interests of candor, the integrity of the Court, and minimum norms of justice, to review and correct patent misstatements and injustices for which he is responsible. Such action would not only exonerate Respondent from the charges of misconduct, but would exonerate him, Judge Burger, from bad faith and intent to aid fraud, and would open the door to the District Court, now bound by his decision, to make similar corrections, in accordance with the highest standards of judicial integrity. Oath of office, U.S.C.A. Title 28, Ch. 21, sec. 455, June 25, 1948, c. 646, 62 Stat. 907; *Bartel* v. *Riedinger,* 338 F.2d 61; *Scott* v. *State,* 323 S.W.2d 445.

4. Disbarment for a well-authenticated Complaint to the Attorney General violated Respondent's right to free speech and of petition protected by Amendment One of the Constitution of the United States.

WHEREFORE, Respondent Diana Kearny Powell respectfully prays that the Disbarment in the United States Court of Appeals for the District of Columbia Circuit be set aside and Repsondent restored to full status as a member of the Bar of this Court.

/s/ DIANA KEARNY POWELL
Diana Kearny Powell,
1500 Massachusetts Ave., N. W.
Washington, D. C. 20005
Respondent pro se

(Certificate/jurat)

(Filed Oct. 25, 1967)

Before: Bazelon, Chief Judge, and Danaher, Burger, Wright, McGowan, Tamm, Leventhal, and Robinson, Circuit Judges, in Chambers.

Order

Upon consideration of motion of Diana Kearny Powell to set aside the Order of Disbarment and upon all the pleadings and proceedings heretofore had herein, it is

ORDERED by the court that the motion to set aside the Order of Disbarment is hereby denied.

Per Curiam

Chief Judge Bazelon and Circuit Judges Danaher and Burger did not participate in the foregoing order.